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State v. Wolfe Appellant's Reply Brief Dckt. 38896

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COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 38896
)	
v.)	
)	
WILLIAM FRANKLIN WOLFE,)	REPLY BRIEF
)	
Defendant-Appellant.)	

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE SECOND JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF IDAHO

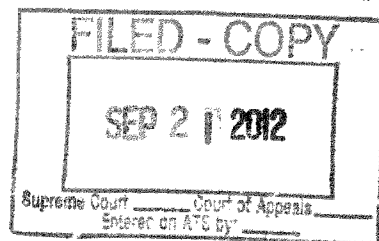
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STATEMENT OF THE CASE

Nature of the Case

The State of Idaho does not have subject matter jurisdiction over the offense of murder where that crime was committed within Indian country, the tribal government has not consented to the State of Idaho acquiring jurisdiction for that offense, and either the defendant or the victim was an “Indian” within the meaning of the federal Indian General Crimes Act. See *State v. Mathews*, 133 Idaho 300, 311-312 (1999). The State appears to make no dispute in this case that Mr. Wolfe had demonstrated that his charged offense of murder was committed in Indian country, that the Nez Perce tribe had not consented to the State of Idaho exercising jurisdiction for such an offense, or that the alleged victim was an “Indian” for purposes of the Indian General Crimes Act. This evidence demonstrates that Idaho lacked subject matter jurisdiction over Mr. Wolfe’s charged offense.

The State’s argument is limited to several claims as to why this Court should not review the substantive merits of Mr. Wolfe’s assertion that the trial court lacked subject matter jurisdiction. This Reply Brief is necessary to clarify why Mr. Wolfe’s allegations of error, and - in particular - his claim of an absence of subject matter jurisdiction, are properly before this Court and should be reviewed on their merits.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Wolfe’s Appellant’s Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court err when it denied Mr. Wolfe's motion for reconsideration of his Rule 35 motion alleging an illegal sentence, and when the district court denied Mr. Wolfe's subsequent Idaho Criminal Rule 35 (*hereinafter*, Rule 35) motion alleging an illegal sentence?

ARGUMENT

The District Court Erred When It Denied Mr. Wolfe's Motion For Reconsideration Of His Rule 35 Motion Alleging An Illegal Sentence, And When The District Court Denied Mr. Wolfe's Subsequent Rule 35 Motion Alleging An Illegal Sentence

A. Introduction

The denial of Mr. Wolfe's motion for reconsideration of the denial of his initial Rule 35 motion alleging an illegal sentence, and Mr. Wolfe's subsequent Rule 35 motion providing additional evidence that his sentence was illegal due to the trial court's lack of subject matter jurisdiction, are properly before this Court and this Court has appellate jurisdiction to review Mr. Wolfe's claims. Moreover, the State's reliance on the doctrine of *res judicata* in this appeal is misplaced – first, because *res judicata* cannot apply in absence of a valid prior judgment and also because no court has ever entertained Mr. Wolfe's claims of a lack of subject matter jurisdiction on the actual merits of his claim. Finally, the State's argument that a Rule 35 motion alleging an illegal sentence does not provide jurisdiction for this Court's review of a claim of a lack of subject matter jurisdiction is directly contrary to Idaho Supreme Court precedent, and therefore is without merit.

B. This Court Has Appellate Jurisdiction To Consider Mr. Wolfe's Claims On Appeal Regarding The Lack Of Subject Matter Jurisdiction In This Case

In this case, the State has asserted that this Court lacks appellate jurisdiction over the merits of Mr. Wolfe's claim that the district court lacked subject matter jurisdiction in his underlying criminal case and therefore his sentence was illegal. The crux of the State's argument is two-fold: first, that the district court's order denying Mr. Wolfe's motion for reconsideration of the denial of his initial Rule 35 motion alleging

an illegal sentence was limited to a ruling regarding his request for a hearing on this motion; and second, that Mr. Wolfe's subsequently filed Rule 35 motion, also alleging an illegal sentence, should be deemed to be a motion for reconsideration that could not form the independent basis for appellate review.

The State's initial argument is not only belied by the record in this case, but it also exalts substance over form in a manner not sustainable by the case law. Following the denial of his initial Rule 35 motion alleging an illegal sentence, Mr. Wolfe filed a motion for reconsideration with the trial court because the district court initially and erroneously dismissed his Rule 35 motion as untimely. (R., pp.49-55.) In order to precipitate action on his motion for reconsideration, Mr. Wolfe subsequently filed a motion seeking a hearing on his motion that had been left unaddressed for years. (R., pp.289-291.) Within the motion requesting a hearing itself, Mr. Wolfe reiterated his claim that the district court lacked subject matter jurisdiction and further supplemented for the court a recent Idaho Supreme Court case that addressed a similar issue. (R., pp.290-291.)

The district court's order reflects that the court was ruling on the merits of Mr. Wolfe's request for reconsideration. In setting forth Mr. Wolfe's request for reconsideration, the court stated, "Mr. Wolfe argues that the State of Idaho lacked subject matter jurisdiction to try him for this crime and his conviction and sentence are therefore illegal." (R., p.299.) After setting out Mr. Wolfe's claims for reconsideration, the court thereafter found that Mr. Wolfe's present claims were fully addressed in the **prior** Rule 35 motion and the post-conviction petition. (R., p.299.) The court then denied relief on *res judicata* grounds. (R., p.299.) The substance of the district court's

order reflects that it was addressing the actual merits of Mr. Wolfe's request for reconsideration of the prior denial of his Rule 35 motion, not merely finding that he was not entitled to a hearing. If the court's ruling were limited to whether a hearing should be held, and not the merits of the request for reconsideration as well, the *res judicata* analysis would be superfluous.

Additionally, because Mr. Wolfe reiterated his argument that the district court lacked subject matter jurisdiction within his request for a hearing on his motion for reconsideration, the substance of this filing should likewise be deemed to be a motion alleging an illegal sentence. (R., pp.289-297.) "Idaho appellate courts have long held that, with respect to post-judgment pleadings filed by convicted defendants, substance governs over form, and a mislabeled pleading will be treated according to its substance." *Schwartz v. State*, 145 Idaho 186, 190 (Ct. App. 2008); *see also Palmer v. McDermitt*, 102 Idaho 591, 593 (1981); *McDowell v. Geokan*, 73 Idaho 430, 439 (1953); *State v. Blume*, 113 Idaho 224, 226 (Ct. App. 1987). Within his request for a hearing, Mr. Wolfe reiterated his prior assertion in his motion for reconsideration both that the district court erroneously denied his prior Rule 35 motion as untimely and that the State of Idaho lacked subject matter jurisdiction over his underlying criminal case. (R., pp.289-297.) Accordingly, the motion seeking a hearing on the motion for reconsideration, on its own, should be deemed by this Court to be a motion for alleging an illegal sentence.

Likewise, the State is in error in asserting that Mr. Wolfe's subsequently filed Rule 35 motion alleging an illegal sentence cannot provide appellate jurisdiction for this Court. Following the denial of Mr. Wolfe's motion for reconsideration, Mr. Wolfe filed a

second motion alleging an illegal sentence that incorporated additional facts and evidence demonstrating the absence of subject matter jurisdiction in this case. (R., pp.328-364.) However, the State argues that this Court should disregard this motion for purposes of determining appellate jurisdiction. (Respondent's Brief, p.6.) The State's argument is predicated on the premise that a second Idaho Criminal Rule 35 motion alleging an illegal sentence should be deemed, instead of being a successive and independent motion, as a motion for reconsideration of any earlier filed Rule 35 motions. (Respondent's Brief, p.6.) Under the State's theory, the second motion filed by Mr. Wolfe alleging an illegal sentence could not be considered as an independent motion and could not provide the basis for any appeal. (Respondent's Brief, p.6.) This case law, however, holds the opposite of the position urged by the State.

Even successive motions brought under Rule 35 that are expressly captioned and styled as motions for reconsideration are considered to be separate, independent motions for relief. See *State v. Bottens*, 137 Idaho 730, 732-733 (Ct. App. 2002). While such successive motions are prohibited where **both** motions involve a request for leniency at sentencing, this is due to the fact that Idaho Criminal Rule 35 provides that, "no defendant may file more than one motion **seeking a reduction of sentence** under this Rule." I.C.R. 35(b). No such limitation is placed on the filing of multiple motions alleging an illegal sentence. I.C.R. 35(a).

Moreover, Mr. Wolfe's second motion alleging an illegal sentence was subsumed within the issues at stake in this appeal by the operation of I.A.R. 17(e)(1)(C). Under this rule, all interlocutory or final orders entered after the judgment or order appealed from are deemed to be included within the appeal. I.A.R. 17(e)(1)(C). Where, as here,

the notice of appeal is filed prior to the district court ruling on a Rule 35 motion in a criminal case, the appeal is deemed to subsume the court's ruling on the Rule 35 motion under the operation of this rule. *State v. Fortin*, 124 Idaho 323, 326 (Ct. App. 1993). Accordingly, Mr. Wolfe's second Rule 35 motion alleging an illegal sentence due to a lack of subject matter jurisdiction is properly before this Court.

Finally, the State's argument ignores the case law specific to issues of subject matter jurisdiction, which by their very terms permit this Court to examine the issue of the potential absence of subject matter jurisdiction, even where the issue was not litigated before the trial court. The State copiously avoids making mention of the fact that the legal issue before this Court is one of subject matter jurisdiction – instead the State uses the phrase “superseding federal jurisdiction” throughout its Respondent's Brief. (Respondent's Brief, pp.4-12.) To the extent that the usage of this terminology might suggest that Mr. Wolfe's claim is one that does not involve the subject matter jurisdiction of the trial court, this choice of phrasing is misleading.

Whether a trial court has subject matter jurisdiction is a question of whether the court had the right to exercise judicial authority over that class of case. See *State v. Armstrong*, 146 Idaho 372, 375 (2008). The case law regarding the alleged commission of crimes involving an Indian within Indian country makes clear that this is an issue that goes to subject matter jurisdiction. “States have **no jurisdiction** over Indians in Indian country without the clear consent of Congress.” *State v. Major*, 111 Idaho 410, 416 (1986) (emphasis added). This “**exclusive federal jurisdiction** is subject to no diminution by the states in absence of specific congressional grant of authority to the states to act.” *Boyer v. Shoshone-Bannock Indian Tribes*, 92 Idaho 257, 260 (1968)

(emphasis added); *see also State v. Barros*, 131 Idaho 379, 382 (1998); *State v. Allan*, 100 Idaho 918, 920 (1980). Because Idaho courts have no power to take any action in a criminal case involving an Indian in Indian country in the absence of a specific grant of jurisdiction by Congress, the question of whether the state court lacked jurisdiction under the Indian General Crimes act and related statutes is a question of subject matter jurisdiction.

As is set forth by the State's own brief in this case, an issue of the potential absence of subject matter jurisdiction is fundamental and cannot be ignored when brought to the reviewing court's attention. *State v. Kavajecz*, 139 Idaho 482, 483 (2003) (*see also* Respondent's Brief, p.4). Yet, ignoring this issue appears to be what the State is asking for this Court to do. Because this Court has proper appellate jurisdiction over Mr. Wolfe's claim of an illegal sentence due to a lack of subject matter jurisdiction, this Court should entertain the merits of this issue.

C. Mr. Wolfe's Claims Of An Illegal Sentence Due To The Lack Of Subject Matter Jurisdiction Is Not Barred By The Doctrine Of *Res Judicata*

The State in this appeal has asserted that the doctrine of *res judicata* precludes review of the merits of Mr. Wolfe's claims of an illegal sentence due to the absence of subject matter jurisdiction. (Respondent's Brief, pp.7-10.) The State makes this claim despite the fact that Mr. Wolfe set forth case law in Idaho that has held that issues of the absence of subject matter jurisdiction are not subject to issue preclusion under *res judicata*. First, prior judgments rendered without subject matter jurisdiction cannot have a preclusive effect on subsequent litigation because the application of *res judicata* requires as a pre-requisite a **valid** prior judgment. *Sys. Associates, Inc. v. Motorola*

Communications & Electronics, Inc., 116 Idaho 615, 617 (1989). With regard to subject matter jurisdiction, a party cannot be estopped from asserting its absence, nor can the issue of subject matter jurisdiction ever be waived by the parties, under well established case law. See *Armstrong*, 146 Idaho at 374. “Furthermore, judgments and orders made without subject matter jurisdiction are void and ‘are subject to collateral attack, and are not entitled to recognition in other states under the full faith and credit clause of the United States Constitution.’” *State v. Lute*, 150 Idaho 837, 840 (2011) (*quoting Sierra Life Ins. Co. v. Granata*, 99 Idaho 624, 626-627 (1978)). Because the absence of subject matter jurisdiction would render any subsequent rulings in a criminal case void, and because issues of subject matter jurisdiction are so fundamental that this issue can never be waived, consented to, or subject to issue preclusion or estoppel, *res judicata* would not operate as a bar to Mr. Wolfe’s assertions of a lack of subject matter jurisdiction.

Equally important, *res judicata* only operates to preclude consideration of an issue where there has been a prior ruling on the **merits** of the issue. See *Ticor Title Co. v. Stanion*, 144 Idaho 119, 124 (2007). Where the prior ruling dispensed with the claim on an issue aside from the substance merits of the claim, *res judicata* does not apply. See, e.g., *Saint Alphonsus Regional Medical Center v. Bannon*, 128 Idaho 41, 44 (1995) (prior dismissal for lack of jurisdiction was not a determination on the merits of the action, and therefore *res judicata* did not apply); *Gilbert*, 104 Idaho at 140-41, 657 P.2d at 4-5 (dismissal for lack of standing is not an adjudication on the merits for *res judicata* purposes); *Gaige v. City of Boise*, 91 Idaho 481, 485, 425 P.2d 52, 56 (1967) (doctrine of *res judicata* did not bar subsequent action when first action dismissed for

lack of ripeness). There was no actual ruling on the **merits** of Mr. Wolfe's claim of a lack of subject matter jurisdiction in this case.

In Mr. Wolfe's post-conviction proceedings, his claim of an absence of subject matter jurisdiction in his underlying criminal case was not decided on the merits. The district court began its analysis on this issue by finding that, "The evidence now available persuades me that there is a genuine issue of whether the court had jurisdiction because there is credible, admissible evidence that [the victim] was in fact a Native American." (R., p.392.) The court, however, denied relief as to his claim – **not** because Mr. Wolfe had not demonstrated an absence of subject matter jurisdiction – but rather because the district court believed that the policy favoring finality of judgments actually trumped the absence of subject matter jurisdiction. (R., pp.392-394.) The court, therefore, failed to render a decision on the merits of Mr. Wolfe's assertion of a lack of subject matter jurisdiction.

The court did not reach the merits of this claim in Mr. Wolfe's initial Rule 35 motion alleging an illegal sentence either. (R., pp.31-32, 49.) The court erroneously dismissed Mr. Wolfe's motion alleging an illegal sentence as untimely, despite the fact that there is no time limit for filing a Rule 35 motion alleging an illegal sentence. (R., p.49.) The trial court did not reach the merits of Mr. Wolfe's motion for reconsideration of the denial of his Rule 35 motion – the court denied this motion based upon the erroneous belief that the court's prior orders **had** addressed the merits of this claim. (R., pp.298-299.) And the district court never addressed the merits of Mr. Wolfe's claim of an illegal sentence in his successive Rule 35 motion alleging an illegal sentence due to a lack of subject matter jurisdiction. Instead, the court denied

this motion under the erroneous belief that a defendant may only file one Rule 35 motion alleging an illegal sentence. (R., p.365.)

Not only was there no prior ruling on the **merits** of Mr. Wolfe's claim of a lack of subject matter jurisdiction – there has been no substantive ruling at all in this case that addresses the merits of Mr. Wolfe's claim. Because there was no prior ruling on the merits of this issue, the State's invocation of *res judicata* in this case is not sustainable.

D. The State's Assertion That Mr. Wolfe's Rule 35 Motion Alleging An Illegal Sentence Does Not Confer Jurisdiction For His Claim Of A Lack Of Subject Matter Jurisdiction Is Directly Contrary To Controlling Case Law

The State's final argument in this appeal is that Mr. Wolfe's Rule 35 motions alleging an illegal sentence due to a lack of subject matter jurisdiction did not confer jurisdiction on the district court to consider his claim. This argument is directly contrary to the very case law that is cited by the State in staking out this position.

In *Lute*, the Idaho Supreme Court established that a Rule 35 motion alleging an illegal sentence due to the absence of subject matter jurisdiction is a proper vehicle to confer jurisdiction upon the trial court to consider the merits of the claim of a lack of jurisdiction – even where the operative facts showing the absence of jurisdiction are not apparent from the face of the charging document and require additional fact-finding by the trial court. *Lute*, 150 Idaho at 839-841. The facts showing the absence of subject matter jurisdiction in *Lute* involved additional factual findings – i.e. that the term of the grand jury that issued the indictment against him had expired, and therefore there was no legal “grand jury” in Mr. Lute's case at all. *Id.*

The Court issued its Opinion in *Lute* after the prior Opinion of *State v. Clements*, upon which the State primarily relies in claiming that Mr. Wolfe could not challenge the

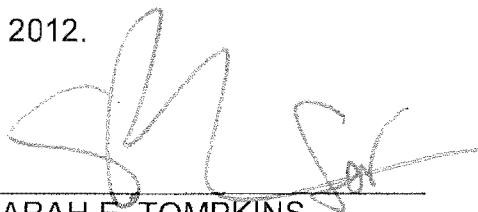
absence of subject matter jurisdiction through his Rule 35 motion alleging an illegal sentence. See *State v. Clements*, 148 Idaho 82 (2009). In *Clements*, the Court set forth the general rule that a claim of an illegal sentence under Rule 35 is limited to those claims that do “not involve significant questions of fact or require an evidentiary hearing.” *State v. Clements*, 148 Idaho 82 (2009). The Court in *Lute* was clearly aware of the prior Opinion in *Clements*, as the Court cites to *Clements* within the *Lute* Opinion itself. *Lute*, 150 Idaho at 839. Despite this, and despite the fact that the determination of the subject matter jurisdiction issue in *Lute* depended upon a very significant question of fact – i.e. that the grand jury’s term had elapsed prior to the issuance of the indictment – the *Lute* Court carved out an exception to the general limitations of *Clements* where the issue at stake goes to the absence of subject matter jurisdiction. And the Court did so expressly on the basis of the fundamental importance of subject matter jurisdiction as a potential defect in a criminal case. *Lute*, 150 Idaho at 839-841.

A Rule 35 motion alleging an illegal sentence is the appropriate vehicle through which to raise a claim of the absence of subject matter jurisdiction in a criminal case, and such a motion confers jurisdiction on the courts to consider the merits of such a claim. The State’s argument to the contrary is therefore without merit.

CONCLUSION

Mr. Wolfe respectfully requests that this Court vacate his judgment of conviction and sentence for murder because the State of Idaho lacked subject matter jurisdiction over this charge. In the alternative, Mr. Wolfe asks that this Court reverse the district court's orders denying his motion for reconsideration of the denial of his Rule 35 motion, as well as the denial of his subsequent Rule 35 motion, and remand this case for a hearing on the merits of these motions.

DATED this 21st day of September, 2012.

A handwritten signature in black ink, appearing to read 'S. E. Tompkins', written over a horizontal line.

SARAH E. TOMPKINS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 21st day of September, 2012, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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